

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:17-cv-315-FDW**

GARY LEON DUNCAN,

Plaintiff,

vs.

RONNA ROMNEY McDANIEL,

Defendant.

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ORDER

THIS MATTER is before the Court on initial review of Plaintiff's Complaint, filed under 42 U.S.C. § 1983, (Doc. No. 1). Also pending are Plaintiff's "Request" for the appointment of counsel, (Doc. No. 7), and Motion for Jury Trial, (Doc. No. 8). Plaintiff is proceeding *in forma pauperis*. See (Doc. No. 5).

On August 7, 2017, *pro se* Plaintiff Gary Leon Duncan filed a civil rights Complaint pursuant to 42 U.S.C. § 1983, that was docketed in case number 1:17-cv-235-FDW. At that time, he was a pretrial detainee at the New River Valley Regional Jail in Dublin, Virginia. He alleged that he had been released from the Avery Mitchell Correctional Institution without a proper N.C.I.S. search for outstanding warrants despite his request, obtained a home and job, and was subsequently arrested on the outstanding warrants that should have been discovered before his release. On October 23, 2017, the Court dismissed the Complaint for facial insufficiency and provided Plaintiff 30 days within which to file an Amended Complaint. (1:17-cv-235, Doc. No. 20).

Plaintiff filed a new § 1983 Complaint on November 14, 2017, (Doc. No. 1), that was not entitled "Amended Complaint" and did not refer to case number 1:17-cv-235. Accordingly, it was


opened in the instant new civil case.

It is apparent that Plaintiff intended the November 14, 2017, pleading to serve as his Amended Complaint in case number 1:17-cv-315.

IT IS, THEREFORE, ORDERED that:

1. The Clerk is instructed to docket the Complaint, (Doc. No. 1), as the Amended Complaint in case number 1:17-cv-235.
2. The Clerk is instructed to transfer the pending motions, (Doc. Nos. 7, 8) to case number 1:17-cv-235.
3. The Order Requiring Initial Partial Payment and Directing the Correctional Facility to Transmit Payment, (Doc. No. 5), is **VACATED**.
4. The Clerk is instructed to close the instant case.

Signed: April 10, 2018



Frank D. Whitney
Chief United States District Judge

